FARAD CONTINUATION SHEET NO.
IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE
NAGPUR BENCH, NAGPUR

Second Appeal No. 674/2004

Appeal	District :
Application No.	of 200
Writ petition	

Office Notes, Office Memoranda of Coram, appearances, Court's orders or directions and Registrar's orders.	Court's or Judge's orders

CORAM : Smt. V. A. Naik, J.
DATED : February 26, 2007.

Heard Shri Talmale for the appellant.

The appellant is the original defendant in Regular Civil Suit No. 85/1991 and the plaintiff in Special Civil Suit No. 37/1994. The controversy pertains to the genuineness or otherwise of the Will executed by one Shridhar who was the husband of the respondent no.2 and father of the respondent no.1, as also the paternal uncle of appellant Vinod. According to appellant Vinod, he became the owner of the suit property in view of the Will executed by his uncle Shridhar in his favour on 12/9/1988.

In the Regular Civil Suit No. 85/1991 (old 424/1988), it was the case of the widow and son of deceased Shridhar that the Will executed by Shridhar in favour of appellant Vinod, was bogus and not a genuine document and appellant Vinod could not have secured any title in view of the said Will. It is not in dispute that Shridhar died on 25/9/1988 after the execution of the said Will.

The trial Court held that appellant Vinod was

the owner of the suit property as the property was bequeathed to him in pursuance of the Will dated 12/9/1988. It was also held by the trial Court that appellant Vinod was looking after his uncle Shridhar and the Will was executed in favour of appellant Vinod by Shridhar because of the love and affection for him. The trial Court, therefore, dismissed Regular Civil Suit No. 85/91 filed by the widow and son of Shridhar and decreed the claim of appellant Vinod to the extent of 1/3rd share in the suit property. The trial Court considered the judgment rendered on 23/7/1998 in Regular Civil Suit No. 20/1984 filed by the wife and son of Shridhar against Shridhar for partition and separate possession, by which the said suit was decreed, holding that the wife and son of Shridhan were entitled to 1/3rd share each in the suit property. The decree passed in Regular Civil Suit No. 20/1984 was not challenged by any of the parties and, therefore, the same attained finality.

The appellate Court, by a common judgment dated 31/7/2004 passed in two separate appeals, one filed by the widow and son of Shridhar, and the other filed by appellant Vinod, reversed the findings recorded by the trial Court and dismissed the appeal filed by Vinod seeking ownership to the entire suit property and allowed the appeal filed by the respondents herein for setting aside the judgment and decree passed by the trial Court. The appellate Court held that the Will executed by Shridhar on 12/9/1988 was not a valid Will and was not a genuine document. The appellate Court

considered the suspicious circumstances revealed from the evidence tendered by the parties to hold that appellant Vinod had failed to prove the genuineness of the Will. The judgment of the appellate Court, dated 31/7/2004, is challenged in this second appeal.

Shri Talmale, the learned counsel for the appellant, relied on the decision reported in **AIR 1982 SC page 133**, to canvass that a circumstance would be suspicious when it is not normal or is not normally accepted in a normal situation or is not accepted by a normal person and the facts of the instant case did not show that the circumstances existing at the time of the execution of the Will were "suspicious". The counsel for the appellant further submitted that the appellate Court was not justified in reversing the finding recorded by the trial Court on the question of genuineness of the Will. He submitted that there was no other circumstance showing the ill-mental condition of the testator except that he had mentioned in the Will that he had no wife and child and, therefore, was bequeathing the entire suit property in favour of appellant Vinod.

I have perused the judgments of the trial and the appellate Court. The appellate Court has considered the entire evidence tendered by the parties on record to hold that the Will executed by Shridhar on 12/9/1988 was bogus one and not a genuine one. The appellate Court further considered the fact that the testator had clearly stated in the Will that he had no wife and child, and that the testator had also not stated in the Will that in view of the judgment and decree

passed in Regular Civil Suit No. 20/1984, he had only 1/3rd share in the suit property and the other 2/3rd share belonged to his wife and son Rama. The Court also considered the fact that at the time of execution of the Will, the testator was admitted in the hospital and he died a few days after the execution of the Will. The Court considered the fact that Shridhar had signed on the first page of the Will in blue ink and had put his thumb impression on the last page, below which his name was scribed in black ink. The evidence of the Doctor to the effect that Shridhar was suffering from Diarrhea at the time of execution of the Will, was not totally accepted by the appellate Court. The appellant Court heavily relied upon the admission of Vinod in his cross-examination to the effect that he had no knowledge whether his uncle was married. The Court then considered the effect of further cross-examination of Vinod which reveals that he was aware of the fact that Shridhar was married with Pushpa and Rama was his son. The appellate Court held that the testimony of appellant Vinod was not trustworthy. The appellant Court also considered certain other evidence tendered by the parties on record, to record a categorical finding that the Will executed by Shridhar in favour of Vinod on 12/9/1988 was not a genuine one. The reason mentioned by the appellate Court for discarding the genuineness of the Will, is “suspicious” circumstances. The judgment reported in **1982 SC page 133** would, therefore, be of no assistance to the case of the appellant. The facts of the reported case enumerated

in paragraph no.10 of the judgment are clearly distinguishable and, therefore, the ratio laid down therein cannot be made applicable to the facts of this case.

The findings recorded by the appellate Court do not give rise to any substantial question of law. Hence the appeal is dismissed with no order as to costs.

JUDGE

RMP